

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
ERNEST MURPHY,

Plaintiff,

-against-

CITY OF NEW YORK et al.,

Defendants.
-----X

16 CIV 4415 (AJN)(JLC)

**DEFT GILKES'
ANSWER WITH
CROSS-CLAIMS**

Defendant **C.O. LAWRENCE GILKES** (øDefendantö) by his attorneys, **KOEHLER & ISAACS LLP**, as and for an Answer with Cross-Claims to the First Amended Complaint, sets forth, upon information and belief, as follows:

AS AND FOR A RESPONSE TO PRELIMINARY STATEMENT

Defendant denies any wrongdoing alleged in this section of the First Amended Complaint and refers all questions of law to the Honorable Court.

RESPONSE TO NATURE OF ACTION

1. The allegations contained in paragraph ø1ö of the First Amended Complaint do not require a response from the Defendant and all questions of law are referred to this Honorable Court.

RESPONSE TO JURISDICTION AND VENUE

2. The allegations contained in paragraph ø2ö of the First Amended Complaint do not require a response from the Defendant and all questions of law are referred to this Honorable Court.

3. The allegations contained in paragraph ø3ö of the First Amended Complaint do not require a response from the Defendant and all questions of law are referred to this Honorable Court.

Court.

4. The allegations contained in paragraph 4 of the First Amended Complaint do not require a response from the Defendant and all questions of law are referred to the Honorable Court.

AS AND FOR A RESPONSE TO JURY DEMAND

5. The allegations contained in paragraph 5 of the First Amended Complaint do not require a response from the Defendant.

AS AND FOR A RESPONSE TO PARTIES

6. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 6 of the First Amended Complaint and refers all questions of law to this Honorable Court.

7. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 7 of the First Amended Complaint, refers all questions of law to this Honorable Court but admits the City of New York is a municipality.

8. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 8 of the First Amended Complaint and refers all questions of law to this Honorable Court.

9. Defendant denies in the form alleged the truth of the allegations contained in paragraph 9 of the First Amended Complaint, refers all questions of law to this Honorable Court but admits he worked as a correction officer at all times relevant to the First Amended Complaint.

10. Defendant denies in the form alleged the allegations contained in paragraph 10 of the First Amended Complaint and refers all questions of law to this Honorable Court.

11. Defendant denies in the form alleged the allegations contained in paragraph 11 of the First Amended Complaint and refers all questions of law to this Honorable Court.

RESPONSE TO STATEMENT OF FACTS

12. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 12 of the First Amended Complaint, as it relates to the plaintiff's incarceration, denies any wrongdoing as it relates to him and refers all questions of law to this Honorable Court.

13. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 13 of the First Amended Complaint.

14. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 14 of the First Amended Complaint as it relates to other parties, denies any wrongdoing as it relates to him and refers all questions of law to this Honorable Court.

15. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 15 of the First Amended Complaint and refers all questions of law to this Honorable Court.

16. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 16 of the First Amended Complaint and refers all questions of law to this Honorable Court.

17. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 17 of the First Amended Complaint and refers all questions of law to this Honorable Court.

18. Defendant denies the allegations contained in paragraph 18 of the First Amended Complaint and refers all questions of law to this Honorable Court.

19. Defendant denies the allegations contained in paragraph 19 of the First Amended Complaint and refers all questions of law to this Honorable Court.

20. Defendant denies the allegations contained in paragraph 20 of the First Amended Complaint and refers all questions of law to this Honorable Court.

21. Defendant denies the allegations contained in paragraph 21 of the First Amended Complaint and refers all questions of law to this Honorable Court.

22. Defendant denies the allegations contained in paragraph 22 of the First Amended Complaint and refers all questions of law to this Honorable Court.

23. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 23 of the First Amended Complaint and refers all questions of law to this Honorable Court.

24. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 24 of the First Amended Complaint as it relates to other defendants, denies any wrongdoing as it relates to him and refers all questions of law to this Honorable Court.

25. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 25 of the First Amended Complaint and refers all questions of law to this Honorable Court.

26. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 26 of the First Amended Complaint and refers all questions of law to this Honorable Court.

27. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 27 of the First Amended Complaint and refers all questions of law to this Honorable Court.

28. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 28 of the First Amended Complaint and refers all questions of law to this Honorable Court.

29. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 29 of the First Amended Complaint and refers all questions of law to this Honorable Court.

30. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 30 of the First Amended Complaint and refers all questions of law to this Honorable Court.

31. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 31 of the First Amended Complaint and refers all questions of law to this Honorable Court.

32. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 32 of the First Amended Complaint and refers all questions of law to this Honorable Court.

33. Defendant denies the legal conclusion set forth in paragraph 33 of the First Amended Complaint and refers all questions of law to this Honorable Court.

34. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 34 of the First Amended Complaint and refers all questions of law to this Honorable Court.

35. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 35 of the First Amended Complaint and refers all questions of law to this Honorable Court.

36. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 36 of the First Amended Complaint and refers all questions of law to this Honorable Court.

37. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 37 of the First Amended Complaint and refers all questions of law to this Honorable Court.

38. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 38 of the First Amended Complaint and refers all questions of law to this Honorable Court.

39. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 39 of the First Amended Complaint and refers all questions of law to this Honorable Court.

40. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 40 of the First Amended Complaint and refers all questions of law to this Honorable Court.

41. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 41 of the First Amended Complaint and refers all questions of law to this Honorable Court.

42. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 42 of the First Amended Complaint and refers all

questions of law to this Honorable Court.

43. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 43 of the First Amended Complaint and refers all questions of law to this Honorable Court.

44. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 44 of the First Amended Complaint and refers all questions of law to this Honorable Court.

45. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 45 of the First Amended Complaint and refers all questions of law to this Honorable Court.

46. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 46 of the First Amended Complaint and refers all questions of law to this Honorable Court.

47. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 47 of the First Amended Complaint and refers all questions of law to this Honorable Court.

48. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 48 of the First Amended Complaint and refers all questions of law to this Honorable Court.

49. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 49 of the First Amended Complaint and refers all questions of law to this Honorable Court.

50. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 50 of the First Amended Complaint and refers all questions of law to this Honorable Court.

51. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 51 of the First Amended Complaint and refers all questions of law to this Honorable Court.

52. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 52 of the First Amended Complaint and refers all questions of law to this Honorable Court.

53. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 53 of the First Amended Complaint and refers all questions of law to this Honorable Court.

54. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 54 of the First Amended Complaint and refers all questions of law to this Honorable Court.

55. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 55 of the First Amended Complaint and refers all questions of law to this Honorable Court.

56. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 56 of the First Amended Complaint and refers all questions of law to this Honorable Court.

57. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 57 of the First Amended Complaint and refers all

questions of law to this Honorable Court.

58. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 58 of the First Amended Complaint and refers all questions of law to this Honorable Court.

59. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 59 of the First Amended Complaint and refers all questions of law to this Honorable Court.

60. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 60 of the First Amended Complaint and refers all questions of law to this Honorable Court.

61. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 61 of the First Amended Complaint and refers all questions of law to this Honorable Court.

62. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 62 of the First Amended Complaint and refers all questions of law to this Honorable Court.

63. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 63 of the First Amended Complaint and refers all questions of law to this Honorable Court.

64. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 64 of the First Amended Complaint and refers all questions of law to this Honorable Court.

65. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 65 of the First Amended Complaint and refers all questions of law to this Honorable Court.

66. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 66 of the First Amended Complaint and refers all questions of law to this Honorable Court.

67. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 67 of the First Amended Complaint and refers all questions of law to this Honorable Court.

68. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 68 of the First Amended Complaint and refers all questions of law to this Honorable Court.

69. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 69 of the First Amended Complaint and refers all questions of law to this Honorable Court.

70. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 70 of the First Amended Complaint and refers all questions of law to this Honorable Court.

71. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 71 of the First Amended Complaint and refers all questions of law to this Honorable Court.

72. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 72 of the First Amended Complaint and refers all

questions of law to this Honorable Court.

73. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 73 of the First Amended Complaint and refers all questions of law to this Honorable Court.

74. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 74 of the First Amended Complaint and refers all questions of law to this Honorable Court.

75. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 75 of the First Amended Complaint and refers all questions of law to this Honorable Court.

76. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 76 of the First Amended Complaint and refers all questions of law to this Honorable Court.

77. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 77 of the First Amended Complaint and refers all questions of law to this Honorable Court.

78. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 78 of the First Amended Complaint and refers all questions of law to this Honorable Court.

79. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 79 of the First Amended Complaint and refers all questions of law to this Honorable Court.

80. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 80 of the First Amended Complaint and refers all questions of law to this Honorable Court.

81. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 81 of the First Amended Complaint and refers all questions of law to this Honorable Court.

82. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 82 of the First Amended Complaint and refers all questions of law to this Honorable Court.

83. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 83 of the First Amended Complaint and refers all questions of law to this Honorable Court.

84. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 84 of the First Amended Complaint and refers all questions of law to this Honorable Court.

85. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 85 of the First Amended Complaint and refers all questions of law to this Honorable Court.

86. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 86 of the First Amended Complaint and refers all questions of law to this Honorable Court.

87. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 87 of the First Amended Complaint and refers all

questions of law to this Honorable Court.

88. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 88 of the First Amended Complaint and refers all questions of law to this Honorable Court.

89. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 89 of the First Amended Complaint and refers all questions of law to this Honorable Court.

90. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 90 of the First Amended Complaint and refers all questions of law to this Honorable Court.

91. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 91 of the First Amended Complaint and refers all questions of law to this Honorable Court.

92. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 92 of the First Amended Complaint and refers all questions of law to this Honorable Court.

93. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 93 of the First Amended Complaint and refers all questions of law to this Honorable Court.

94. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 94 of the First Amended Complaint and refers all questions of law to this Honorable Court.

95. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 95 of the First Amended Complaint and refers all questions of law to this Honorable Court.

96. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 96 of the First Amended Complaint and refers all questions of law to this Honorable Court.

97. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 97 of the First Amended Complaint and refers all questions of law to this Honorable Court.

98. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 98 of the First Amended Complaint and refers all questions of law to this Honorable Court.

99. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 99 of the First Amended Complaint and refers all questions of law to this Honorable Court.

100. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 100 of the First Amended Complaint and refers all questions of law to this Honorable Court.

101. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 101 of the First Amended Complaint and refers all questions of law to this Honorable Court.

102. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 102 of the First Amended Complaint and refers

all questions of law to this Honorable Court.

103. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 103 of the First Amended Complaint and refers all questions of law to this Honorable Court.

104. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 104 of the First Amended Complaint and refers all questions of law to this Honorable Court.

105. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 105 of the First Amended Complaint as it relates to other defendants, denies any wrongdoing as it relates to answering defendant and refers all questions of law to this Honorable Court.

106. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 106 of the First Amended Complaint as it relates to other defendants, denies any wrongdoing as it relates to answering defendant and refers all questions of law to this Honorable Court.

107. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 107 of the First Amended Complaint as it relates to other defendants, denies any wrongdoing as it relates to answering defendant and refers all questions of law to this Honorable Court.

108. Defendant denies the legal conclusion contained in paragraph 108 of the First Amended Complaint and refers all questions of law to this Honorable Court.

109. Defendant denies in the form alleged the truth of the allegations contained in paragraph 109 of the First Amended Complaint and refers all questions of law to this Honorable

Court.

110. Defendant denies the legal conclusion contained in paragraph 110 of the First Amended Complaint and refers all questions of law to this Honorable Court.

111. Defendant denies the legal conclusion contained in paragraph 111 of the First Amended Complaint and refers all questions of law to this Honorable Court.

AS AND FOR A RESPONSE TO FIRST CLAIM
(42 U.S.C. §1983)

112. Defendant repeats, reiterates and re-alleges the responses to the allegations set forth in paragraphs 10 through 111 above with the same force and effect as if fully set forth herein.

113. Defendant denies the allegations contained in paragraph 113 of the First Amended Complaint and refers all questions of law to this Honorable Court.

114. Defendant denies the allegations contained in paragraph 114 of the First Amended Complaint and refers all questions of law to this Honorable Court.

115. Defendant denies the allegations contained in paragraph 115 of the First Amended Complaint and refers all questions of law to this Honorable Court.

AS AND FOR A RESPONSE TO SECOND CLAIM
(First Amended Retaliation)

116. Defendant repeats, reiterates and re-alleges the responses to the allegations set forth in paragraphs 10 through 115 above with the same force and effect as if fully set forth herein.

117. Defendant denies the allegations contained in paragraph 117 of the First Amended Complaint and refers all questions of law to this Honorable Court.

118. Defendant denies the legal conclusion contained in paragraph 118 of the First Amended Complaint and refers all questions of law to this Honorable Court.

119. Defendant denies the allegations contained in paragraph 119 of the First Amended Complaint and refers all questions of law to this Honorable Court.

120. Defendant denies the legal conclusions contained in paragraph 120 of the First Amended Complaint and refers all questions of law to this Honorable Court.

121. Defendant denies the legal conclusion contained in paragraph 121 of the First Amended Complaint and refers all questions of law to this Honorable Court.

122. Defendant denies the legal conclusion contained in paragraph 122 of the First Amended Complaint and refers all questions of law to this Honorable Court.

123. Defendant denies the legal conclusion contained in paragraph 123 of the First Amended Complaint and refers all questions of law to this Honorable Court.

AS AND FOR A RESPONSE TO THIRD CLAIM
(Excessive Force)

124. Defendant repeats, reiterates and re-alleges the responses to the allegations set forth in paragraphs 1 through 123 above with the same force and effect as if fully set forth herein.

125. Defendant denies the truth of the allegations contained in paragraph 125 of the First Amended Complaint and refers all questions of law to this Honorable Court.

126. Defendant denies the legal conclusions contained in paragraph 126 of the First Amended Complaint and refers all questions of law to this Honorable Court.

127. Defendant denies the legal conclusions contained in paragraph 127 of the First Amended Complaint and refers all questions of law to this Honorable Court.

AS AND FOR A RESPONSE TO FOURTH CLAIM
(False Arrest & Malicious Prosecution)

128. Defendant repeats, reiterates and re-alleges the responses to the allegations set forth in paragraphs 11 through 127 above with the same force and effect as if fully set forth herein.

129. Defendant denies the truth of the allegations contained in paragraph 129 of the First Amended Complaint and refers all questions of law to this Honorable Court.

130. Defendant denies the legal conclusion set forth in paragraph 130 of the First Amended Complaint and refers all questions of law to this Honorable Court.

131. Defendant denies the legal conclusions contained in paragraph 131 of the First Amended Complaint and refers all questions of law to this Honorable Court.

132. Defendant denies the legal conclusions contained in paragraph 132 of the First Amended Complaint and refers all questions of law to this Honorable Court.

AS AND FOR A RESPONSE TO FIFTH CLAIM
(Denial of Constitutional Right to Fair Trial)

133. Defendant repeats, reiterates and re-alleges the responses to the allegations set forth in paragraphs 11 through 132 above with the same force and effect as if fully set forth herein.

134. Defendant denies the allegations contained in paragraph 134 of the First Amended Complaint and refers all questions of law to this Honorable Court.

135. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 135 of the First Amended Complaint and refers all questions of law to this Honorable Court.

136. Defendant denies the allegations contained in paragraph 136 of the First Amended Complaint and refers all questions of law to this Honorable Court.

137. Defendant denies the legal conclusions contained in paragraph 137 of the First Amended Complaint and refers all questions of law to this Honorable Court.

138. Defendant denies the legal conclusions contained in paragraph 138 of the First Amended Complaint and refers all questions of law to this Honorable Court.

AS AND FOR A RESPONSE TO SIXTH CLAIM
(Equal Protection)

139. Defendant repeats, reiterates and re-alleges the responses to the allegations set forth in paragraphs 1 through 138 above with the same force and effect as if fully set forth herein.

140. Defendant denies the legal conclusions contained in paragraph 140 of the First Amended Complaint and refers all questions of law to this Honorable Court.

141. Defendant denies the legal conclusions contained in paragraph 141 of the First Amended Complaint and refers all questions of law to this Honorable Court.

142. Defendant denies the legal conclusions contained in paragraph 142 of the First Amended Complaint and refers all questions of law to this Honorable Court.

143. Defendant denies the legal conclusions contained in paragraph 143 of the First Amended Complaint and refers all questions of law to this Honorable Court.

AS AND FOR A RESPONSE TO SEVENTH CLAIM
(Due Process)

144. Defendant repeats, reiterates and re-alleges the responses to the allegations set forth in paragraphs 1 through 143 above with the same force and effect as if fully set forth herein.

145. Defendant denies the allegations contained in paragraph 145 of the First Amended Complaint and refers all questions of law to this Honorable Court.

146. Defendant denies the allegations contained in paragraph 146 of the First Amended Complaint and refers all questions of law to this Honorable Court.

147. Defendant denies the allegations contained in paragraph 147 of the First Amended Complaint and refers all questions of law to this Honorable Court.

148. Defendant denies the allegations contained in paragraph 148 of the First Amended Complaint and refers all questions of law to this Honorable Court.

149. Defendant denies the allegations contained in paragraph 149 of the First Amended Complaint and refers all questions of law to this Honorable Court.

150. Defendant denies the allegations contained in paragraph 150 of the First Amended Complaint and refers all questions of law to this Honorable Court.

151. Defendant denies the allegations contained in paragraph 151 of the First Amended Complaint and refers all questions of law to this Honorable Court.

AS AND FOR A RESPONSE TO SEVENTH CLAIM
(8TH Amendment)

152. Defendant repeats, reiterates and re-alleges the responses to the allegations set forth in paragraphs 1 through 151 above with the same force and effect as if fully set forth herein.

153. Defendant denies the allegations contained in paragraph 153 of the First Amended Complaint and refers all questions of law to this Honorable Court.

154. Defendant denies the allegations contained in paragraph 154 of the First Amended Complaint and refers all questions of law to this Honorable Court.

155. Defendant denies the allegations contained in paragraph 155 of the First Amended Complaint and refers all questions of law to this Honorable Court.

AS AND FOR A RESPONSE TO NINTH CLAIM
(Failure to Intervene)

156. Defendant repeats, reiterates and re-alleges the responses to the allegations set forth in paragraphs 11 through 155 above with the same force and effect as if fully set forth herein.

157. Defendant denies the allegations contained in paragraph 157 of the First Amended Complaint and refers all questions of law to this Honorable Court.

158. Defendant denies the allegations contained in paragraph 158 of the First Amended Complaint and refers all questions of law to this Honorable Court.

159. Defendant denies the allegations contained in paragraph 159 of the First Amended Complaint and refers all questions of law to this Honorable Court.

160. Defendant denies the allegations contained in paragraph 160 of the First Amended Complaint and refers all questions of law to this Honorable Court.

AS AND FOR A RESPONSE TO TENTH CLAIM
(Monell)

161. Defendant repeats, reiterates and re-alleges the responses to the allegations set forth in paragraphs 11 through 160 above with the same force and effect as if fully set forth herein.

162. Defendant denies the legal conclusions contained in paragraph 162 of the First Amended Complaint and refers all questions of law to this Honorable Court.

163. Defendant denies the legal conclusions contained in paragraph 163 of the First Amended Complaint and refers all questions of law to this Honorable Court.

164. Defendant denies the legal conclusions contained in paragraph 164 of the First Amended Complaint and refers all questions of law to this Honorable Court.

165. Defendant denies the legal conclusions contained in paragraph 165 of the First Amended Complaint and refers all questions of law to this Honorable Court.

166. Defendant denies the legal conclusions contained in paragraph 166 of the First Amended Complaint and refers all questions of law to this Honorable Court.

167. Defendant denies the legal conclusions contained in paragraph 167 of the First Amended Complaint and refers all questions of law to this Honorable Court.

168. Defendant denies the legal conclusions contained in paragraph 168 of the First Amended Complaint and refers all questions of law to this Honorable Court.

169. Defendant denies the legal conclusions contained in paragraph 169 of the First Amended Complaint and refers all questions of law to this Honorable Court.

170. Defendant denies the allegations contained in paragraph 170 of the First Amended Complaint and refers all questions of law to this Honorable Court.

171. Defendant denies the legal conclusions contained in paragraph 171 of the First Amended Complaint and refers all questions of law to this Honorable Court.

172. Defendant denies the legal conclusions contained in paragraph 172 of the First Amended Complaint and refers all questions of law to this Honorable Court.

173. Defendant denies the legal conclusions contained in paragraph 173 of the First Amended Complaint and refers all questions of law to this Honorable Court.

174. Defendant denies the legal conclusions contained in paragraph 174 of the First Amended Complaint and refers all questions of law to this Honorable Court.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

The Court lacks personal jurisdiction over the Defendant as the plaintiff failed to properly effectuate service under CPLR §308.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

The Defendant has not violated any rights, privileges or immunities under the Constitution or laws of the United States or the State of New York or any political subdivision thereof.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

The First Amended Complaint fails to state a cause of action upon which relief may be granted against the Defendant.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

Defendant is entitled to any setoff applicable under the circumstances of this action.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

Defendant is entitled to immunity as he, at all times relevant to the First Amended Complaint, reasonably, properly and lawfully exercised his discretion as a public employee.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE

Plaintiff's claims in whole or in part are untimely.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE

Plaintiff failed to satisfy mandatory conditions precedent to the instant action including but without limitation, those established under Sections 50-e, 50-h and 50-i of the New York General Municipal Law.

AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE

Plaintiff's injuries, if any, resulted solely from his own culpable or negligent conduct or the culpable or negligent conduct of others and were not the proximate result of action by the Defendant.

AS AND FOR A NINTH AFFIRMATIVE DEFENSE

Plaintiff is not entitled to punitive damages under the circumstances of this action.

AS AND FOR A TENTH AFFIRMATIVE DEFENSE

Defendant reserves the right to amend and/or supplement these affirmative defenses during the course of this litigation.

**FIRST CROSS-CLAIM AGAINST
DEFENDANT CITY OF NEW YORK**

175. At all times relevant in this action, all of the actions of the Defendant were performed as part of his duties and within the scope of his employment and the rules and regulations as a Correction Officer for the New York City Department of Correction.

176. Any damages sustained by the plaintiff at the time or place mentioned in the First Amended Complaint are embraced within the indemnification clause of Section 50-k of the New York State General Municipal Law.

177. Section 50-k(3) of the New York State General Municipal Law states:

The city shall indemnify and save harmless its employees in the amount of any judgment obtained against such employees in any state or federal court, or in the amount of any settlement of a claim approved by the corporation counsel and the comptroller, provided that the act or omission from which such judgment or settlement arose occurred while the employee was acting within the scope of his public employment and in the discharge of his duties and was not in violation of any rule or regulation of his agency at the time the alleged damages were sustained; the duty to indemnify and save harmless prescribed

by this subdivision shall not arise where the injury or damage resulted from intentional wrongdoing or recklessness on the part of the employee

178. Pursuant to 50-k(3), if it is shown that if the Defendant is in any way liable to the plaintiff based upon on the allegations in the First Amended Complaint, the Defendant is entitled to recover from the City of New York the full amount of any judgment which might be rendered against the Defendant.

**SECOND CROSS CLAIM AGAINST
DEFENDANT CITY OF NEW YORK**

179. Defendant repeats, reiterates and re-alleges the allegations set forth in paragraphs 175 through 178 with the same force and effect as if fully set forth herein.

180. Defendant has denied the material allegations asserted against him in the underlying action and has asserted affirmative defenses.

181. If the plaintiff sustained injuries and damages alleged in the First Amended Complaint, such injuries and damages were sustained by reason of negligence by the Defendant City of New York, its agents, servants and/or employees.

182. Therefore, if the injuries and damages alleged in the First Amended Complaint were caused as a result of negligence or wrongdoing other than by the plaintiff's own culpable conduct, then such damage is a result of the knowing, reckless and/or grossly negligent acts and omissions of the Defendant City of New York and its supervisory officials.

183. Consequently, if it is shown that the Defendant is in any way liable to the plaintiff based upon the allegations in the First Amended Complaint, Defendant is entitled to recover from the City of New York the full amount of any judgment that might be rendered against the Defendant.

WHEREFORE, Defendant **C.O. LAWRENCE GILKES** respectfully demands:

- (a) Judgment dismissing the First Amended Complaint in its entirety;
- (b) Judgment on each of his cross-claims against the Defendant City of New York for the amount of any judgment that may be obtained herein by the plaintiff against the Defendant, or in an amount equal to the excess over and above his equitable share of any such judgment and
- (c) Together with the costs and disbursements of this action, and such other and further relief as the Court may deem just and proper.

Dated: New York, New York
October 25, 2016

Respectfully Submitted,

KOEHLER & ISAACS LLP

____/s/ *Julie A. Ortiz*_____
Julie A. Ortiz (JR-1817)
Attorneys for Defendant: Gilkes
61 Broadway, 25th Floor
New York, New York 10006
(917) 551-1300

To: Law Firm of Ryan Lozar
Attorneys for Plaintiff
304 Broadway, 9th Floor
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CERTIFICATE OF SERVICE

I certify that on October 25, 2016, I electronically filed the within **DEFENDANT GILKES' ANSWER WITH CROSS-CLAIMS TO THE FIRST AMENDED COMPLAINT** with the Clerk of the Court using the CM/ECF system and have served the same *via ECF and regular mail* upon the following:

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Dated: New York, New York
October 25, 2016

____/s/ *Julie A. Ortiz*_____
Julie A. Ortiz (JR-1817)